

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

NEW HORIZON INVESTMENT  
HOLDINGS LLC,

Plaintiff,

v.

KAUSHAL PATEL,

Defendant.

Civil Action

File No.:

**COMPLAINT FOR DAMAGES**

**COMES NOW** New Horizon Investment Holdings LLC, Plaintiff in the above-styled civil action, (“Plaintiff”), and for its Complaint for Damages avers the following:

**PARTIES**

1.

Plaintiff is a Georgia limited liability company, with its principal place of business located in Duluth, Georgia. Accordingly, Plaintiff is a resident of the State of Georgia.

2.

Defendant Kaushal Patel, (“Defendant” or “KP”), resides at 42 Montrose Avenue, Jersey City, New Jersey 07307, and service of process will be accomplished via second original at Defendant KP’s residence or via Waiver of Service.

### **JURISDICTION, AND VENUE**

3.

This Court has subject-matter jurisdiction over this matter, pursuant to 28 U.S.C. § 1332, as Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

4.

Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b)(2) and N.D.Ga. L.R. 3.1(B), as the cause of action arose within the Northern District of Georgia, Atlanta Division.

### **FACTS COMMON TO ALL COUNTS**

5.

Plaintiff reavers Paragraphs 1 through 4 of Plaintiff’s Complaint for Damages as if such Paragraphs were set forth fully herein.

6.

On or about April 15, 2021, Plaintiff sold all of its right, title, and interest in and to Seller's furniture, fixtures, equipment, cash, inventory, chattels, and any and

all personal property for a “Checkers” restaurant to 2K21 Restaurants Woodstock, LLC. (collectively “Property”).

7.

The closing for the sale of the Property took place in Georgia.

8.

The purchase price for the Property was \$200,000, and was to be paid as follows: \$25,000 at closing in Georgia on April 15, 2021; and, \$175,000 payable in equal consecutive monthly payments of \$2,392.04 of principal and interest, in hand on or before the first (1st) calendar day of each month, commencing on November 1, 2021, for eighty-four (84) consecutive months, with interest on the principal at a rate of four percent (4%) per annum. The aforementioned obligation was memorialized in a Promissory Note that 2K21 Restaurants Woodstock, LLC executed in favor of Plaintiff. (Exhibit “A”).

9.

Defendant KP executed a Personal Guaranty of his Defendant Company’s obligation under the Promissory Note. (Page 4 of Exhibit “A”).

10.

The Nonexclusivity Paragraph within the Promissory Note states, “Nothing within this Note and accompanying Personal Guaranty shall be deemed to demand or require that [Plaintiff] first pursue Borrower for any default or nonpayment.

[Plaintiff] shall have the sole discretion to pursue Borrower or Guarantor separately or jointly for damages related to the default or nonpayment.” (See p. 3 of Exhibit “A”).

11.

2K21 Restaurants Woodstock, LLC defaulted on its obligation to pay Plaintiff its monthly payments that commenced on November 1, 2021.

12.

On November 11, 2021, Plaintiff notified Defendant and 2K21 Restaurants Woodstock, LLC in writing of the default of the Promissory Note and Personal Guaranty, (Exhibit “B”), of Plaintiff’s acceleration of the principal balance, of Plaintiff’s intent to seek unpaid accrued interest at the contractual default rate of eighteen percent (18%) per annum, and of Plaintiff’s demand for all costs of collection, legal expenses, and attorney’s fees in the amount of fifteen percent (15%) of the amount of unpaid principal and interest pursuant to the Secured Promissory Note and Personal Guaranty.

13.

Defendant ultimately made two monthly payments, but otherwise failed to cure his default as set forth in Plaintiff’s notice of default.

#### **COUNT I – BREACH OF CONTRACT**

14.

Plaintiff reavers Paragraphs 1 through 13 of Plaintiff's Complaint for Damages as if such Paragraphs were set forth fully herein.

15.

Plaintiff performed its obligations in accordance with the Promissory Note and Personal Guaranty.

16.

Plaintiff has met all conditions precedent necessary to filing this Complaint for Damages.

17.

Defendant KP is liable to Plaintiff for his breach of the Personal Guaranty in the principal amount of \$175,000, plus contractual interest at eighteen percent (18%) per annum from November 17, 2021, until the date of Judgment.

#### **COUNT II – ATTORNEY'S FEES AND EXPENSES**

18.

Plaintiff reavers Paragraphs 1 through 17 of Plaintiff's Complaint for Damages as if such Paragraphs were set forth fully herein.

19.

Plaintiff notified Defendant in writing of his default and that it intended to seek attorney's fees and costs, in addition to the principal due Plaintiff. (*See Exhibit "B"*).

20.

Defendant remains in default.

21.

By breaching the Contract and not curing the breach following notice from Plaintiff, Defendant has conducted himself in bad faith and in a stubbornly litigious manner entitling Plaintiff to an award of its attorney's fees, costs, and expenses associated with the above-styled civil action pursuant to all provisions of Georgia law.

22.

Plaintiff is entitled to an award of its attorney's fees and expenses of litigation in the amount of fifteen percent (15%) of the amount of unpaid principal and interest pursuant to the Personal Guaranty.

**WHEREFORE**, Plaintiff respectfully prays for the following relief:

- a. Summons and process issue as the law provides;
- b. Judgment in favor of Plaintiff and against Defendant in the principal amount of \$175,0000;
- c. Judgment in favor of Plaintiff and against Defendant for interest at eighteen percent (18%) per annum from November 17, 2021, until the date of Judgment;

- d. Judgment in favor of Plaintiff and against Defendant for Plaintiff's attorney's fees and expenses in the amount of fifteen percent (15%) of the principal and interest owed; and,
- c. Such other and further relief as this Court deems just and proper.

**This** 10<sup>th</sup> day of July, 2023.

Respectfully submitted,

**MASON | CARTER LLC**

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